IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3063 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL KARIM @ BABU GULAM RASULVORA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3063 of 2004

MR NM KAPADIA for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 27-12-2001. By the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about nine criminal cases pending against the petitioner. All these cases are registered under the

Bombay Prohibition Act. It is alleged that the petitioner is illegally dealing in foreign liquor. In the grounds of detention, the detaining authority has also relied upon the statement of three secret witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those three witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Mr.Kapadia, learned advocate for the petitioner submitted that the detention order is of 2001 but as the petitioner was absconding, he was detained under preventive detention in the year 2004. However, this Court is concerned only with the merits of the detention order. It is submitted by Mr.Kapadia, that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenu. He submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. To substantiate his say, Mr.Kapadia has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236.

3) In the aforesaid judgement after relying upon the judgement of the Division Bench, the learned Single Judge has specifically stated that the authority is required to take independent steps for considering general background, character, antecedents, criminal tendency etc., before reaching the subjective satisfaction while exercising powers under Section 9 (2) of the Act. As the said aspect is missing in this case also, the privilege claimed by the authority in this case is not genuine and proper.

4) Mr.Kapadia has also submitted that if the statements of witnesses are taken out, then it cannot be said that the detenu has committed breach of public order and for this purpose, he has relied upon the decision of the Division Bench of this Court rendered in L.P.A. No.223/2000, wherein Division Bench of this Court has held that on the basis of registered criminal cases under the Bombay Prohibition Act, it cannot be said that the petitioner is guilty of violating public order.

5) In view of the judgements referred above, the order of detention is required to be set aside, as, it

cannot be said that privilege is properly claimed by the authority under Section 9 (2) of the Act, and also on the ground that the breach of public order is not established.

6) For the foregoing reasons, this petition is allowed. The order of detention dated 27-12-2001 is quashed and set aside. The detenu, Abdul Karim alias Babu Gulam Rasul Vora is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

/malek